



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dennis J. Hubscher

File: B-252088.2

Date: September 29, 1993

DIGEST

Employee requested annual leave from his agency during June that, if granted, would have avoided forfeiture of annual leave. Agency denied request because of employee's pending assignment to training at Industrial College of the Armed Forces for the remainder of the year. Since the Industrial College has a restrictive leave policy for its students, it could grant him only 40 hours leave during school year and before academic recess period from December 18, 1992 to January 1, 1993, leaving employee with 80 hours of leave subject to forfeiture. Employee elected not to take annual leave during the academic recess period. Employee's claim for restoration of annual leave may be granted only to the extent the employee's "use or lose" leave balance of 80 hours exceeds the leave the employee could have taken during academic recess period.

DECISION

The Department of the Interior asks whether it may restore 80 hours of annual leave to Mr. Dennis J. Hubscher that he forfeited at the end of the 1992 leave year.¹ We conclude that only 20 hours of annual leave may be restored to Mr. Hubscher.

On June 17, 1992, Mr. Hubscher, who was aware of his potential "use or lose" leave situation, requested 168 hours of annual leave during October 20 through November 18, 1992, by submitting a Standard Form 71, Application for Leave. On June 24, 1992, Mr. Hubscher's immediate supervisor, denied his request. The supervisor's note observed that the Interior Department had selected Mr. Hubscher to participate in a 10-month study program offered by the Industrial College of the Armed Forces, National Defense University

¹This request was submitted by Mr. Ed Kay, Principal Deputy Assistant Secretary, Policy, Management and Budget, Department of the Interior, Washington, DC.

(ICAF), which was to begin on August 17, 1992. Since Mr. Hubscher would be under the direct supervision of the ICAF during the period, the supervisor told him to try to obtain approval for the leave requested from the ICAF.

On June 25, 1992, Mr. Hubscher contacted the ICAF concerning its leave policies, which are restrictive and generally do not allow students to take annual leave during the school year. The only period of annual leave that the ICAF would approve for Mr. Hubscher was for 5 days (40 hours) from October 26 through 30, 1992.² In addition, Mr. Hubscher used 88 hours of annual leave before the start of his August 17, 1992, assignment to the ICAF.

After that, in a memorandum to his immediate supervisor, dated November 20, 1992, Mr. Hubscher stated that he would still have 80 hours of annual leave that would be subject to forfeiture at the end of the 1992 leave year. Since Mr. Hubscher concluded that the ICAF would not grant him any further annual leave, he requested that the 80 hours of "use or lose" annual leave that would be forfeited at the end of the 1992 leave year be restored.

The Interior Department states that Mr. Hubscher's memorandum of November 20, 1992, merely requested that the leave that he was going to forfeit at the end of the leave year on January 9, 1993, be restored. It concludes that Mr. Hubscher had no intention of requesting or scheduling leave to avoid forfeiture and that his request for restoration of 80 hours of annual leave should not be granted.

Mr. Hubscher notes that he did request leave on June 17, and his supervisor advised him to try to obtain approval for the leave from the ICAF, which he did attempt to do. He argues that by November 20, 1992, it was clear that the ICAF would not grant him any further leave, and that forfeiture of his annual leave was inevitable. Thus, he explains, his memorandum of November 20, 1992, did not request that 80 hours be "scheduled" again, but merely requested that, after forfeiture, the leave should be restored.

Under 5 U.S.C. § 6304(a) (1988), annual leave exceeding the accumulation permitted by law (normally 240 hours) is forfeited at the beginning of the first full pay period in a year. Forfeited annual leave may be restored under 5 U.S.C. § 6304(d) (1) (1988), however, if the leave was scheduled in

²See Mr. Hubscher's NDU Form 4, denied Aug. 21, 1992, and Standard Form 71, dated Aug. 31, 1992, and granted in part on Sept. 21, 1992 (limited to 40 hours by the ICAF).

advance and the exigencies of the public business prevented the employee from using the scheduled leave.³

In George J. DiGiulio, 60 Comp. Gen. 598 (1981), while we recognized that exigencies of the public business usually refer to the situation where an employee forfeits his annual leave because of a pressing need for him to perform work for his employing agency, we held that where an employee had scheduled the use of his annual leave, but was unable to use such leave in the "use it or lose it" category because he had to perform jury service, such leave may be restored under the "exigencies of the public business" exception in 5 U.S.C. § 6304(d)(1)(B).

Here, contrary to the Interior Department's contention stated above, the record shows that Mr. Hubscher did attempt to schedule annual leave with the Department of the Interior on June 17, 1992, and that there were subsequent written requests to the ICAF to schedule leave, the first of which ICAF denied, and the second of which it granted for only a period of 5 days (40 hours of annual leave).⁴ By November 20, 1992, it was obvious that the ICAF would not grant Mr. Hubscher any leave except for the recess period and that forfeiture of a part of his remaining 80 hours of annual leave was inevitable. Therefore, the annual leave Mr. Hubscher was unable to use because of his attendance at the school may be restored to him under the "exigencies of the public business" exception.

However, we do not agree with Mr. Hubscher that all of the 80 hours should be restored to him. He could have taken 60 hours of annual leave during the ICAF's academic recess (December 18, 1992, to January 1, 1993), but chose for his own convenience not to do so.⁵ We thus view the forfeiture of only 20 hours of annual leave (80 hours less 60 hours) as due to the exigencies of the public business. See George J. DiGiulio, 60 Comp. Gen. 598, supra.

³For restoration of leave under the statute, 5 C.F.R. § 630.308 (1992) provides that "use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year."

⁴See footnote 2, above.

⁵See Memorandum of the ICAF's Dean of Students and Administration, dated Nov. 23, 1992, and National Defense University Policy Statement 8-82, dated Dec. 18, 1986. Even assuming that Mr. Hubscher had academic assignments during the academic recess, he could have taken 60 hours of annual leave (two holidays and 4 hours of administrative leave on Dec. 24, 1993, being excluded).

Accordingly, under 5 U.S.C. § 6304(d)(1)(A) (1988),
Mr. Hubscher is entitled to restoration of 20 hours of
annual leave.

for *Symon Efron*

James F. Hinchman
General Counsel